

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

IN RE:)	
)	
RICKY DEAN POWELL)	Bankr. Case No. 08-62876
CYNTHIA MAY POWELL-SPARKS,)	Chapter 13
)	
Debtors.)	
_____)	
)	
W. CLARKSON MCDOW, JR.,)	
UNITED STATES TRUSTEE)	
FOR REGION FOUR,)	
)	
Plaintiff,)	
v.)	Adversary Proceeding No. _____
)	
RICKY DEAN POWELL)	
CYNTHIA MAY POWELL-SPARKS,)	
)	
Defendants.)	

COMPLAINT OBJECTING TO DISCHARGE
11 U.S.C. § 1328(F)(1)

W. Clarkson McDow, Jr. (“U.S. Trustee”), United States Trustee for Region Four, by counsel, hereby files this Complaint, pursuant to section 1328(f)(1) of the Bankruptcy Code, objecting to the discharge of the defendants, Ricky Dean Powell and Cynthia May Powell-Sparks. In support of this Complaint, the U.S. Trustee states as follows:

Jurisdiction and Venue

1. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J).
2. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
3. Ricky Dean Powell and Cynthia May Powell-Sparks (“defendants” or “debtors”) are residents of Cumberland, Virginia.

4. On November 18, 2008, the defendants filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code in the Eastern District of Virginia, Richmond Division, case no. 08-35833. On November 26, 2008, the case was transferred to the Western District of Virginia, Lynchburg Division, case no. 08-62876.

5. Previously, on October 13, 2005, the defendants filed a petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division. See case no. 05-36594.

6. On March 6, 2006, the defendants received a chapter 7 discharge in case no. 05-36594, in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division.

7. Pursuant to 11 U.S.C. 1328(f)(1), debtors may not receive a discharge under chapter 13 of the Bankruptcy Code if they are granted a chapter 7 discharge in a case filed during the four-year period preceding their Chapter 13 filing.

8. Here, the defendants initiated this chapter 13 proceeding within four years of the date they commenced case no. 05-36594. Accordingly, the defendants are not entitled to receive a discharge in this case.

WHEREFORE, the U.S. Trustee respectfully requests that this Court issue an order denying the defendants' discharge in this case.

Dated: 15 January, 2009

W. CLARKSON MCDOW, JR.
United States Trustee for Region Four

By: /s/ Margaret K. Garber

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